

The motion to lay on the table was agreed to.

Mr. GORE. Mr. President, I rise today in support of the legislation currently before the Senate. There are several items, however, on which I would like clarification. First, I am troubled by the fact that this bill does not contain a specific exception allowing businesses to call their existing customers. Earlier drafts of this legislation contained such an exception. Second, I want to be sure that the FCC has the flexibility to adopt from a wide array of options whatever types of rules they find necessary to protect the public interest. The reported bill does not specify which approach they must choose. For example, they are not required to adopt a national database of prohibited numbers. Finally, I have concerns regarding the directions given to the FCC to explore the effect of the regulations on local telephone solicitations, and the extent of the Federal system with regard to intrastate calling.

First, with regard to existing business relationships, it would seem to me that businesses need to be able to contact customers with whom they have a prior or existing relationship. Furthermore, these are the types of calls customers want to receive, because it informs them about promotional opportunities from vendors with whom they have had relationships.

Is it not true that the committee deleted the established business relationship exception from the bill because it did not want to become involved in the technicalities of determining what this phrase means? Nevertheless, is it not true the FCC may consider establishing different rules concerning calls made by businesses to their prior or existing customers?

Mr. PRESSLER. Yes, that is correct.

Mr. GORE. Also, with regard to the rulemaking to be conducted by the FCC to protect telephone subscribers' privacy rights, it is my understanding that the FCC is free to adopt any type of regulation that they decide accomplishes the purpose of this legislation. The committee has specifically directed that the FCC consider as one possibility the option of mandating companies to maintain company-based do not call systems to identify customers who do not wish to be called again by that company. Is that correct?

Mr. PRESSLER. Yes, that is correct.

Mr. GORE. Furthermore, I also noticed that the committee has directed the FCC to consider whether the procedures eventually adopted should apply to businesses that conduct primarily local telephone solicitations. While the committee cites small businesses and holders of second-class mail permits such as newspapers as two examples of companies that conduct these types of solicitations, am I correct in my understanding that any company conducting primarily local telephone solicitations might be included in this category? It would seem

that the provision should apply to companies that conduct business locally, and thus become part of the community, and are subject to the scrutiny of the community, and must live by their reputation in the community, regardless of the specific type of business they conduct. For example, one of my constituents, Olan Mills, has photography studios located across the country. However, each location generally conducts its solicitations directly from the studio, within the local community. Nearly all of these calls are local in nature, and rarely cross State boundaries unless the studio is located in a community near a State line. Am I correct in believing that this is the kind of business meant by the committee to be considered under this provision?

Mr. PRESSLER. Yes, that is correct.

Mr. GORE. Finally, I would like a clarification as to the relationship between the Federal regulations to be enacted by the FCC and State laws in the area of intrastate telephone solicitations. It would seem to me that in the area of these telephone solicitations, it would be preferable to have the Federal law as a national scheme to protect telephone subscribers. While the States remain free to adopt laws affecting intrastate communications, I am sure the Senator would join me in encouraging the States to adopt laws consistent with the Federal system to facilitate the telemarketers' ability to comply fully with both the State and Federal laws regarding intrastate communications.

Mr. PRESSLER. The Senator is correct in his understanding.

Mr. GORE. I thank the Senator for the clarification.

The PRESIDING OFFICER. If there is no objection, the committee amendment, as amended, is agreed to and the bill is deemed to have read a third time and passed.

[The bill (S. 1410), as amended, will appear in a subsequent issue of the RECORD.]

Mr. HOLLINGS. Mr. President, I move to reconsider the vote.

Mr. WARNER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### AUTOMATED TELEPHONE CONSUMER PROTECTION ACT

Mr. HOLLINGS. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar 262, S. 1462, the Automated Telephone Consumer Protection Act.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1462) to amend the Communications Act of 1934 to prohibit certain practices involving the use of telephone equipment for advertising and solicitation purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

#### SECTION 1. SHORT TITLE.

*This Act may be cited as the "Automated Telephone Consumer Protection Act".*

#### SEC. 2. RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.

(a) AMENDMENT.—Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end the following new section:

#### "SEC. 223. RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.

"(a) DEFINITIONS.—As used in this section—

"(1) The term 'automatic telephone dialing system' means equipment which has the capacity—

"(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and

"(B) to dial such numbers.

"(2) The term 'telephone facsimile machine' means equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line.

"(3) The term 'unsolicited advertisement' means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

"(b) RESTRICTIONS.—It shall be unlawful for any person within the United States—

"(1) to make any call using any automatic telephone dialing system or an artificial or prerecorded voice—

"(A) to any emergency telephone line of any hospital, medical physician or service office, health care facility, or fire protection or law enforcement agency; or

"(B) to any telephone number assigned to paging or cellular telephone service;

"(2) to initiate any telephone call to any residence using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes; or

"(3) to send an unsolicited advertisement by a facsimile machine.

#### "(c) TECHNICAL AND PROCEDURAL STANDARDS.—

"(1) PROHIBITION.—It shall be unlawful for any person within the United States—

"(A) to initiate any communication using a telephone facsimile machine, or to make any telephone call using any automatic telephone dialing system that does not comply with the technical and procedural standards prescribed under this subsection, or to use any telephone facsimile machine or automatic telephone dialing system (to make any telephone solicitation) in a manner that does not comply with such standards; or

"(B) to use a computer or other electronic device to send any message via a telephone facsimile machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and an identification of the business sending the message and the telephone number of the sending machine or of such business.

"(2) **TELEPHONE FACSIMILE MACHINES.**—The Commission shall revise the regulations setting technical and procedural standards for telephone facsimile machines to require that any such machine which—

"(A) is manufactured after 6 months after the date of enactment of this section, and

"(B) can be used for the distribution of unsolicited advertising,

clearly marks, in a margin at the top or bottom of each transmitted page or on the first page of each transmission, the date and time sent, an identification of the business sending the message, and the telephone number of the sending machine or of such business. The Commission shall exempt from such standards, for 18 months after such date of enactment, telephone facsimile machines that do not have the capacity for automatic dialing and transmission and that are not capable of operation through an interface with a computer.

"(3) **ARTIFICIAL OR PRERECORDED VOICE SYSTEMS.**—The Commission shall prescribe technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone. Such standards shall require that—

"(A) all artificial or prerecorded telephone messages (i) shall, at the beginning of the message, state clearly the identity of the business initiating the call, and (ii) shall, during or after the message, state clearly the telephone number or address of such business; and

"(B) any such system will automatically release the called party's line within 5 seconds of the time the system receives notification that the called party has hung up, to allow the called party's line to be used to make or receive other calls.

"(d) **STATE LAW NOT PREEMPTED.**—Nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits—

"(1) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements;

"(2) the use of automatic telephone dialing systems to transmit prerecorded telephone solicitations; or

"(3) the use of artificial or prerecorded voice messages."

"(b) **CONFORMING AMENDMENT.**—Section 2(b) of the Communications Act of 1934 (47 U.S.C. 152(b)) is amended by striking "and 225" and inserting in lieu thereof ", 225, and 228".

Mr. HOLLINGS. Mr. President, I rise today to urge the Senate to approve S. 1462, the Automated Telephone Consumer Protection Act. The substitute amendment before the Senate addresses an enormous public nuisance. Computerized telephone calls are invading our homes and destroying our privacy. Consumers around the country are crying out for Congress to put a stop to these computerized telephone calls. Congress has a clear opportunity to protect the interests of our citizens, and we should not pass up this chance.

Computerized calls are the scourge of modern civilization. They wake us up in the morning; they interrupt our dinner at night; they force the sick and elderly out of bed; they hound us until we want to rip the telephone right out of the wall.

Even more important, these computerized telephone calls threaten our

personal health and safety. In one case, a family that suffered an emergency illness could not call 911 because the telephone line was tied up by a computerized message. An elderly woman who was confined to bed in a hospital after surgery was constantly interrupted by computerized sales calls. Computerized calls tie up the emergency line of police, fire, and medical services and prevent real emergency calls from getting through.

These machines are out of control, and their use is growing by 30 percent every year. It is telephone terrorism, and it has got to stop.

Let me offer my colleagues a glimpse of the types of consumer complaints that I heard from some of my constituents in South Carolina concerning these computerized telephone calls.

Ms. Nadine Brock of the Anderson County Emergency Services testified as follows:

In my present position with the county government, we dispatch ambulances. And when these 911 calls are coming in from the computerized solicitations, it ties up those emergency lines. . . . So when these calls come in and tie up our emergency lines, then those real emergencies that come through cannot get through to us. And of course from the point of dispatching ambulances, this is a lifesaving emergency that we cannot meet when our lines are tied up on these computerized calls.

Ms. Beverly Nett of Incentives Unlimited in Greenville, SC, complained that her business is hampered by these computerized telephone calls. She said:

We have only six lines that come into our company and when one of the computerized messages come in, it is very frustrating because I cannot give them a piece of my mind because it is—like you said, it is going to go on and on. So if I simply hang up the phone on a computerized message, it rolls to the next line and to the next line, and somebody else in the office is picking it up. It even rolls into our fax machine and our fax machine will ring with these numbers. It takes time away from the office routine.

The telemarketing industry appears oblivious to the harm it is creating. Two months ago, a representative of the Direct Marketing Association said on television that telemarketers have a right to call us in our homes. This is absurd. I echo Supreme Court Justice Louis Brandeis, who wrote 100 years ago that "the right to be left alone is the most comprehensive of rights and the one most valued by civilized man".

Mr. President, I originally introduced this bill on July 11 of this year. Since then, my constituents in South Carolina and citizens around the country have deluged my office with letters of support for this bill. Senator Inouye, the chairman of the Communications Subcommittee, held a hearing on the bill on July 24. Not one party at that hearing testified in opposition to the bill. Because of the enormous public support, the bill was ordered reported by the Commerce Committee, which I chair, and without objection on July 31.

Mr. Steve Hamm, administrator of the Department of Consumer Affairs in South Carolina, informed me that his office receives more complaints about computerized telephone calls and 900 numbers than any other problems. Despite the fact that South Carolina recently passed legislation to protect consumers from unwanted computerized calls within our State, South Carolina consumers continue to suffer from computerized calls made from out-of-State. The State law does not, and cannot, regulate interstate calls. Only Congress can protect citizens from telephone calls that cross State boundaries. That is why Federal legislation is essential.

In response to these continuing consumer complaints in South Carolina, Mr. Hamm asked me to come down to South Carolina to hear directly from my constituents about their problems with 900 numbers and computerized telephone calls. I chaired 2 days of hearing on October 10 in Greenville, SC, and on October 11 in Columbia, SC. These hearings gave consumers in South Carolina the opportunity to relate their real-life experiences with these calls and to suggest some improvements to the bill.

Mr. President, the substitute bill I am offering today contains a number of small changes to the bill that was reported by the Commerce Committee. These changes address concerns that were raised at the hearing in Washington and hearings in South Carolina, and in the additional comments that were received from the public.

The substitute bill contains a private right-of-action provision that will make it easier for consumers to recover damages from receiving these computerized calls. The provision would allow consumers to bring an action in State court against any entity that violates the bill. The bill does not, because of constitutional constraints, dictate to the States which court in each State shall be the proper venue for such an action, as this is a matter for State legislators to determine. Nevertheless, it is my hope that States will make it as easy as possible for consumers to bring such actions, preferably in small claims court. The consumer outrage at receiving these calls is clear. Unless Congress makes it easier for consumers to obtain damages from those who violate this bill, these abuses will undoubtedly continue.

Small claims court or a similar court would allow the consumer to appear before the court without an attorney. The amount of damages in this legislation is set to be fair to both the consumer and the telemarketer. However, it would defeat the purposes of the bill if the attorneys' costs to consumers of bringing an action were greater than the potential damages. I thus expect that the States will act reasonably in

permitting their citizens to go to court to enforce this bill.

The substitute also permits the States to enforce the provisions of the bill. Several parties, including the Federal Communications Commission (FCC) itself, raised concerns that the FCC might not have the resources to pursue violators of this bill. The will of the FCC to enforce the bill rigorously was also questioned, especially since the chairman of the FCC submitted testimony at the July hearing to indicate that he believed the bill was unnecessary. To address these allegations, the bill permits the State attorneys general to enforce the provisions of the bill in Federal court. These provisions are noncontroversial and are almost identical to the provisions of S. 1392, which have already passed the Senate as part of the omnibus crime bill.

The substitute bill specifically directs the FCC to initiate a rulemaking to consider whether, and to what extent, restrictions might apply to calls placed to business telephones. This provision has been included in response to complaints from some businesses that computerized telephone calls are tying up their business lines. The Supreme Court has generally recognized that persons at work do not have the same level of privacy protection as is afforded to persons in their homes. Thus, the legality of a ban on unwanted computerized telephone calls to the workplace is uncertain. Restrictions other than a ban on such calls, however, might be justifiable. If the FCC finds, after a notice and comment proceeding, that the record justifies some form of restriction on computerized calls to the workplace on constitutional and policy grounds, the FCC is free to adopt such regulations.

The substitute makes clear that computerized calls can be made to emergency lines and cellular or paging lines in emergency situations, or with the consent of the called party. It is not my intention in this bill to restrict the use of artificial or prerecorded voice messages in genuine emergency situations. Such emergency situations are to be defined by the FCC, but it is expected that situations which pose a threat to the health and safety of persons or property would be included in the definition of emergency.

The substitute extends the ban on computerized calls to cover patient and guest rooms in hospitals, elderly homes, or other similar health care facilities. The obvious purpose of this provision is to protect the health of persons who may find it difficult to answer the telephone. Such persons deserve the same amount of protection as persons in their homes, and possibly more protection. These persons suffer not only from an invasion of their privacy; they also suffer a potential risk to their health because of the difficulty in reaching the telephone.

This provision was added in response to numerous consumer complaints

from persons who were lying in hospital rooms recovering from surgery and were disturbed by computerized telephone calls. Hospital patients often need extended hours of sleep or rest to aid their recovery. While the FCC might have defined either emergency lines or residence to include hospital guest rooms, I believe it is wiser to include this specific provision in the legislation to make clear our intent. Although this provision is to be interpreted by the FCC consistent with the constitutional guarantees of free speech it is not expected that this provision would apply to guest rooms in hotels or other where the privacy or health interests are not as great as those I have just described.

Finally, the substitute recognizes that the FCC has the authority to craft different rules, including an exemption, for certain types of calls. This provision responds to the concerns expressed by some telephone companies about new services, and some companies that use machines to place calls for debt-collection purposes. In considering the need for special rules, however, the FCC must be careful to ensure that its rules are fully consistent with the first amendment protections in the constitution. This bill carefully avoids drawing any distinctions among types of calls based on the content of the message being delivered. The provisions of this bill apply whether these calls are made for commercial, political, or other purposes. This content-neutral approach is essential to preserve the unbiased, nondiscriminatory nature of this legislation. If the FCC finds, however, that some distinctions can be justified on policy grounds and constitutional grounds, the FCC is free to adopt rules to recognize those distinctions.

The substitute bill also contains a number of minor clarifications that are consistent with the intent of the original bill. For instance, the substitute extends the ban on calling paging and cellular lines to specialized mobile radio, radio common carrier, and other services that charge the person receiving the call. The substitute also allows consent to be given orally, in writing, electronically, or by any other means, as long as the consent is expressly given to the particular entity making the call. Such consent could be obtained, for instance, by including a clause in a contract or purchase agreement indicating that signing the agreement constitutes the purchaser's express consent to receive a computerized call concerning that service or product. Such consent also could be obtained by a live person who simply asks the called party whether he or she agrees to listen to a recorded message.

This bill has been drafted to comply strictly with the first amendment guarantees of freedom of speech. The record of our hearings demonstrates that a ban on computerized calls to the home—except in emergencies or

with the called party's consent—is the least restrictive means of protecting the consumer's privacy in the home. There is no other alternative that will protect the interests of the consumer. Any proposed new technology or other method of allowing consumers to avoid receiving these calls is likely to be ineffective or place too much of the burden on the consumer to protect his or her privacy interests.

Let me also make clear with respect to the Constitution that this legislation does not cover calls made by live persons. The intention of this bill is to deal directly with computerized calls. From the record of the hearings we have held and the consumer complaints we have received, it is clear that it is the computerized call that generates the most significant consumer outrage and that is most clearly an invasion of our privacy, a nuisance, and a threat to our health and safety. Mr. Hamm testified at our hearings in South Carolina:

And I think that while I have not found any individuals that are crazy about telephone solicitations generally, I have not talked to the first consumer nor the first business that welcomes these kinds of calls in terms of computer calls.

All this legislation requires is that when a person is called at home, there must be a live person at the other end of the line. This applies regardless of the message being delivered because it is an equal invasion of privacy whether the computerized message is made for political, charitable, or commercial purposes.

Mr. President, these changes have been fully shared and explored with the members of the industry and the consumer representatives who support this bill. There is no significant opposition to the bill. I believe Congress should carry out its duty to protect the integrity of the home and stop this unwarranted invasion of our privacy. I therefore urge the passage of this substitute bill by the Senate.

Mr. WARNER. Mr. President, I join my distinguished colleague from South Carolina, the chairman of the committee that has jurisdiction over this legislation, in urging the adoption of this legislation. Indeed, the most important thing we have in this country is our freedom and our privacy, and this is clearly an invasion of that.

Mr. HOLLINGS. I thank the distinguished colleague.

#### AMENDMENT NO. 1311

(Purpose: To make an amendment in the nature of a substitute, and to amend the title of the bill)

Mr. HOLLINGS. Mr. President, I send a substitute amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Carolina (Mr. HOLLINGS) proposes an amendment numbered 1311.

permitting their citizens to go to court to enforce this bill.

The substitute also permits the States to enforce the provisions of the bill. Several parties, including the Federal Communications Commission (FCC) itself, raised concerns that the FCC might not have the resources to pursue violators of this bill. The will of the FCC to enforce the bill rigorously was also questioned, especially since the chairman of the FCC submitted testimony at the July hearing to indicate that he believed the bill was unnecessary. To address these allegations, the bill permits the State attorneys general to enforce the provisions of the bill in Federal court. These provisions are noncontroversial and are almost identical to the provisions of S. 1392, which have already passed the Senate as part of the omnibus crime bill.

The substitute bill specifically directs the FCC to initiate a rulemaking to consider whether, and to what extent, restrictions might apply to calls placed to business telephones. This provision has been included in response to complaints from some businesses that computerized telephone calls are tying up their business lines. The Supreme Court has generally recognized that persons at work do not have the same level of privacy protection as is afforded to persons in their homes. Thus, the legality of a ban on unwanted computerized telephone calls to the workplace is uncertain. Restrictions other than a ban on such calls, however, might be justifiable. If the FCC finds, after a notice and comment proceeding, that the record justifies some form of restriction on computerized calls to the workplace on constitutional and policy grounds, the FCC is free to adopt such regulations.

The substitute makes clear that computerized calls can be made to emergency lines and cellular or paging lines in emergency situations, or with the consent of the called party. It is not my intention in this bill to restrict the use of artificial or prerecorded voice messages in genuine emergency situations. Such emergency situations are to be defined by the FCC, but it is expected that situations which pose a threat to the health and safety of persons or property would be included in the definition of emergency.

The substitute extends the ban on computerized calls to cover patient and guest rooms in hospitals, elderly homes, or other similar health care facilities. The obvious purpose of this provision is to protect the health of persons who may find it difficult to answer the telephone. Such persons deserve the same amount of protection as persons in their homes, and possibly more protection. These persons suffer not only from an invasion of their privacy; they also suffer a potential risk to their health because of the difficulty in reaching the telephone.

This provision was added in response to numerous consumer complaints

from persons who were lying in hospital rooms recovering from surgery and were disturbed by computerized telephone calls. Hospital patients often need extended hours of sleep or rest to aid their recovery. While the FCC might have defined either emergency lines or residence to include hospital guest rooms, I believe it is wiser to include this specific provision in the legislation to make clear our intent. Although this provision is to be interpreted by the FCC consistent with the constitutional guarantees of free speech it is not expected that this provision would apply to guest rooms in hotels or other where the privacy or health interests are not as great as those I have just described.

Finally, the substitute recognizes that the FCC has the authority to craft different rules, including an exemption, for certain types of calls. This provision responds to the concerns expressed by some telephone companies about new services, and some companies that use machines to place calls for debt-collection purposes. In considering the need for special rules, however, the FCC must be careful to ensure that its rules are fully consistent with the first amendment protections in the constitution. This bill carefully avoids drawing any distinctions among types of calls based on the content of the message being delivered. The provisions of this bill apply whether these calls are made for commercial, political, or other purposes. This content-neutral approach is essential to preserve the unbiased, nondiscriminatory nature of this legislation. If the FCC finds, however, that some distinctions can be justified on policy grounds and constitutional grounds, the FCC is free to adopt rules to recognize those distinctions.

The substitute bill also contains a number of minor clarifications that are consistent with the intent of the original bill. For instance, the substitute extends the ban on calling paging and cellular lines to specialized mobile radio, radio common carrier, and other services that charge the person receiving the call. The substitute also allows consent to be given orally, in writing, electronically, or by any other means, as long as the consent is expressly given to the particular entity making the call. Such consent could be obtained, for instance, by including a clause in a contract or purchase agreement indicating that signing the agreement constitutes the purchaser's express consent to receive a computerized call concerning that service or product. Such consent also could be obtained by a live person who simply asks the called party whether he or she agrees to listen to a recorded message.

This bill has been drafted to comply strictly with the first amendment guarantees of freedom of speech. The record of our hearings demonstrates that a ban on computerized calls to the home—except in emergencies or

with the called party's consent—is the least restrictive means of protecting the consumer's privacy in the home. There is no other alternative that will protect the interests of the consumer. Any proposed new technology or other method of allowing consumers to avoid receiving these calls is likely to be ineffective or place too much of the burden on the consumer to protect his or her privacy interests.

Let me also make clear with respect to the Constitution that this legislation does not cover calls made by live persons. The intention of this bill is to deal directly with computerized calls. From the record of the hearings we have held and the consumer complaints we have received, it is clear that it is the computerized call that generates the most significant consumer outrage and that is most clearly an invasion of our privacy, a nuisance, and a threat to our health and safety. Mr. Hamm testified at our hearings in South Carolina:

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Mr. President, these changes have been fully shared and explored with the members of the industry and the consumer representatives who support this bill. There is no significant opposition to the bill. I believe Congress should carry out its duty to protect the integrity of the home and stop this unwarranted invasion of our privacy. I therefore urge the passage of this substitute bill by the Senate.

Mr. WARNER. Mr. President, I join my distinguished colleague from South Carolina, the chairman of the committee that has jurisdiction over this legislation, in urging the adoption of this legislation. Indeed, the most important thing we have in this country is our freedom and our privacy, and this is clearly an invasion of that.

Mr. HOLLINGS. I thank the distinguished colleague.

#### AMENDMENT NO. 1311

(Purpose: To make an amendment in the nature of a substitute, and to amend the title of the bill)

Mr. HOLLINGS. Mr. President, I send a substitute amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Carolina (Mr. HOLLINGS) proposes an amendment numbered 1311.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:  
SECTION 1. SHORT TITLE.

This Act may be cited as the "Automated Telephone Consumer Protection Act."

SEC. 2. RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.

(a) AMENDMENT.—Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end the following new section:

"SEC. 223. RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.

"(a) DEFINITIONS.—As used in this section—

"(1) The term 'automatic telephone dialing system' means equipment which has the capacity—

"(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and

"(B) to dial such numbers.

"(2) The term 'telephone facsimile machine' means equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line.

"(3) The term 'unsolicited advertisement' means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

"(b) RESTRICTIONS.—

"(1) REGULATIONS.—The Commission shall prescribe regulations to make it unlawful for any person within the United States—

"(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—

"(i) to any emergency telephone line (including any '911' line and any emergency line of a hospital, medical physician or service office, health care facility, or fire protection or law enforcement agency) or to the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

"(ii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or radio common carrier service, or any other service for which the called party is charged for the call;

"(B) to initiate any telephone call to any residence using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes;

"(C) to send an unsolicited advertisement by a facsimile machine; or

"(D) to use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are seized simultaneously.

"(2) PRIVATE RIGHT OF ACTION.—A person who has received more than one telephone call from the same entity, or delivering the same or a similar message, in violation of regulations prescribed under this subsection may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State an action in such person's own name to enjoin such calls, an action to recover for actual monetary loss or receive \$500 in damages for each violation,

whichever is greater, or both such actions. The court may, in its discretion, increase the award for monetary loss to an amount not to exceed three times the actual monetary loss up to \$1,500 for each violation, or to increase the award of damages to an amount not to exceed \$1,500 for each violation, if the court finds the defendant willfully or knowingly violated such regulations.

"(3) CALLS TO BUSINESSES.—In the course of its rulemaking proceeding to prescribe regulations under paragraph (1), the Commission shall consider prescribing regulations to allow businesses to avoid receiving calls made using an artificial or prerecorded voice message to which they have not given their prior express consent.

"(4) EXEMPTIONS AND OTHER PROVISIONS.—In the course of its rulemaking proceeding to prescribe regulations under paragraph (1), the Commission shall also determine whether and to what extent the regulations should include exemptions and other provisions to address special circumstances, consistent with the public interest, convenience, and necessity.

"(c) TECHNICAL AND PROCEDURAL STANDARDS.—

"(1) PROHIBITION.—It shall be unlawful for any person within the United States—

"(A) to initiate any communication using a telephone facsimile machine, or to make any telephone call using any automatic telephone dialing system that does not comply with the technical and procedural standards prescribed under this subsection, or to use any telephone facsimile machine or automatic telephone dialing system in a manner that does not comply with such standards; or

"(B) to use a computer or other electronic device to send any message via a telephone facsimile machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual.

"(2) TELEPHONE FACSIMILE MACHINES.—The Commission shall revise the regulations setting technical and procedural standards for telephone facsimile machines to require that any such machine which—

"(A) is manufactured after 6 months after the date of enactment of this section, and

"(B) can be used for the distribution of unsolicited advertising,

clearly marks, in a margin at the top or bottom of each transmitted page or on the first page of each transmission, the date and time sent, an identification of the business, other entity, or individual sending the message, and the telephone number of the sending machine or of such business, other entity, or individual. The Commission shall exempt from such standards, for 18 months after such date of enactment, telephone facsimile machines that do not have the capacity for automatic dialing and transmission and that are not capable of operation through an interface with a computer.

"(3) ARTIFICIAL OR PRERECORDED VOICE SYSTEMS.—The Commission shall prescribe technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone. Such standards shall require that—

"(A) all artificial or prerecorded telephone messages (i) shall, at the beginning of the message, state clearly the identity of the business, individual, or other entity initiating the call, and (ii) shall, during or after the message, state clearly the telephone

number or address of such business, other entity, or individual; and

"(B) any such system will automatically release the called party's line within 5 seconds of the time the system receives notification that the called party has hung up, to allow the called party's line to be used to make or receive other calls.

"(d) STATE LAW NOT PREEMPTED.—Nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits—

"(1) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements;

"(2) the use of automatic telephone dialing systems to transmit prerecorded telephone solicitations; or

"(3) the use of artificial or prerecorded voice messages.

"(e) ACTIONS BY STATES.—

"(1) AUTHORITY OF STATES.—Whenever the attorney general of a State, or an official or agency designated by a State, has reason to believe that any person has engaged or is engaging in a pattern or practice of telephone calls to residents of that State in violation of the regulations prescribed under this section, the State may bring a civil action on behalf of its residents to enjoin such calls, an action to recover for actual monetary loss or receive \$500 in damages for each violation, or both such actions. The court may, in its discretion, increase the award for monetary loss to an amount not to exceed three times the actual monetary loss up to \$1,500 for each violation, or to increase the award of damages to an amount not to exceed \$1,500 for each violation, if the court finds the defendant willfully or knowingly violated such regulations.

"(2) EXCLUSIVE JURISDICTION OF FEDERAL COURTS.—The district courts of the United States, the United States courts of any territory, and the District Court of the United States for the District of Columbia shall have exclusive jurisdiction over all civil actions brought under this subsection. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or orders affording life relief, commanding the defendant to comply with the provisions of regulations prescribed under this section, including the requirement that the defendant take such action as is necessary to remove the danger of violation of any such regulations. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

"(3) RIGHTS OF COMMISSION.—The State shall serve prior written notice of any such civil action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Commission shall have the right (A) to intervene in the action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

"(4) VENUE; SERVICE OF PROCESS.—Any civil action brought under this subsection in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the violation occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

"(5) INVESTIGATORY POWERS.—For purposes of bringing any civil action under this subsection, nothing in this section shall prevent



the attorney general of a State from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

"(6) EFFECT ON STATE COURT PROCEEDINGS.—Nothing contained in this subsection shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.

"(7) LIMITATION.—Whenever the Commission has instituted a civil action for violation of regulations prescribed under this section, no State may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for any violation as alleged in the Commission's complaint.

"(8) DEFINITION.—As used in this subsection, the term 'attorney general' means the chief legal officer of a State."

(b) CONFORMING AMENDMENT.—Section 2(b) of the Communications Act of 1934 (47 U.S.C. 152(b)) is amended by striking "and 225" and inserting in lieu thereof ", 225, and 228".

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment of the Senator from South Carolina.

The amendment (No. 1311) was agreed to.

Mr. INOUE. Mr. President, I rise today to voice my support for S. 1462, the Automated Telephone Consumer Protection Act offered by my good friend and colleague, Senator HOLLINGS, and S. 1410, the Telephone Advertising Consumer Rights Act offered by my other good friend, Senator PRESSLER. These bills address an urgent and pressing problem in American society—the proliferation of machine-generated and live telephone calls.

I have great respect for the telemarketing industry. Telemarketing is a useful and cost-effective tool for many merchants. But telemarketers must learn not to take advantage of their technology. They must learn to respect the privacy rights of consumers in their homes. They must learn not to tie up the telephone or fax lines of businesses without prior consent. And they must ensure that they limit the danger to emergency services.

The two bills before the Senate today, Senator HOLLINGS' bill to regulate computerized telephone calls, and Senator PRESSLER's bill to regulate calls by live persons, are reasonable attempts to protect consumers, businesses, and emergency services from unwanted telephone calls. There is overwhelming support for both of these bills, and these substitute versions reflect the substantial input of the telemarketing industry. I applaud both my colleagues for their work to protect the telephone consumer, and look forward to having these bills enacted into law before the end of this year.

Mr. BENTSEN. Mr. President, I join my colleague, the distinguished Senator from South Carolina, Senator

FRITZ HOLLINGS, in supporting the immediate passage of S. 1462, the Automated Telephone Consumer Protection Act of 1991. This bill addresses an issue of great concern to many of my Texas constituents and people all over the country: The unreasonable encroachment upon their privacy by unsolicited, automated telephone calls to homes, businesses, and public institutions and by the unsolicited use of facsimile machines to transmit advertising.

Automatic dialer recorded message players are used by telemarketers to automatically dial a telephone number and deliver an artificial or prerecorded voice message. The use of these machines makes long distance telemarketing much less expensive. As a result, these machines are widely used and the telemarketing industry has grown by immense proportions.

Advertisements for all kinds of consumer products, trips, investments, credit cards, and sweepstakes are frequently communicated to home, business, and cellular telephones, as well as paging machines, through the use of automated calls. Such advertisements are also transmitted to facsimile machines. One survey found that about 75 percent of the public favor some form of regulation of these calls, and one-half of these favored prohibiting all unsolicited calls.

As Senator HOLLINGS has noted, consumer complaints about the use of these machines and the use of junk fax have steadily increased.

This bill would ban all unsolicited automated calls to the home that are not made for emergency purposes. It would also ban all automated calls to emergency telephone lines, cellular telephones, and paging systems. Furthermore, it would ban all unsolicited advertising to facsimile machines.

In spite of the traditional hesitancy of Congress to pass legislation that regulates a particular industry or technology, we must enact this bill in order to avoid the unreasonable interference with the privacy of consumers and the normal conduct of public and private business. I urge my colleagues to endorse this important legislation that will restrict the use of automated calling and junk fax, without making distinctions based upon the content of the respective communications.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

[The bill (S. 1462) will appear in a subsequent issue of the Record.]

Mr. HOLLINGS. Mr. President, I move to reconsider the vote.

Mr. WARNER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The title was amended so as to read: "A bill to amend the Communications Act of 1934 to prohibit certain practices involving the use of telephone equipment."

#### CHANGE OF VOTE—ROLLCALL 246

Mr. WARNER. Mr. President, I propound a unanimous-consent request which has been cleared by both the majority and Republican leader. I ask unanimous consent to change my vote from "nay" to "yea" on rollcall 246, adopting the conference report on H.R. 2707 for fiscal year 1992 Labor-Health and Human Services and Education appropriations bill. The measure was approved by a majority, 72 to 25, and the addition of an affirmative vote, making 73 to 24, will have no effect on the outcome.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The foregoing tally has been changed to reflect the above order.)

Mr. HOLLINGS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BOREN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### SENATE REFORM

Mr. BOREN. Mr. President, as we come near the close of this legislative week, I again want to discuss an issue that I have been discussing now on a weekly basis in the Senate with our colleagues and with the American people. That is a need to reform Congress as an institution. All of us realize that we have serious problems with the functioning of this institution. There are constructive changes that need to be made so that we can better fulfill our responsibilities, to grapple with the problems which confront us.

The last time that Congress took a major look at itself and made sweeping reforms at its own internal structures and procedures was in the period immediately after World War II, as the cold war was about to begin. In 1946, 1947, the Monroney-La Follette Commission was established by a joint action of the House and Senate to examine the institution of Congress, to make sure that the Congress was ready to meet the challenges of a new age.

The cold war was beginning. The superpower confrontation was begin-